

IN THE UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF GEORGIA  
ATLANTA DIVISION

THE PHOENIX INSURANCE :  
COMPANY, As Subrogee of  
BROWN MEDICAL ASSOCIATES, P.C. :

Plaintiff, :

v. : CIVIL ACTION  
FILE NO.:1:13-cv-01443-ODE

GARRY DAVIS and :  
CITY OF ATLANTA,

Defendants, :

**AMENDED COMPLAINT FOR DAMAGES**

COMES NOW the Plaintiff, THE PHOENIX INSURANCE COMPANY, as subrogee of Brown Medical Associates, P.C., and files this Amended Complaint against the Defendants, and shows the Court as follows:

1.

Plaintiff, The Phoenix Insurance Company is a corporation with its office and principal place of business located in a state other than Georgia. It is licensed to do business in the State of Georgia.

2.

Plaintiff's subrogor, Brown Medical Associates, P.C., is authorized to do business in the State of Georgia, and operates it's medical business located at 1123 R.D. Abernathy Boulevard, Atlanta, Georgia 30310.

3.

Defendant, Garry Davis, is an adult individual who may be served with process at his last known address as 4289 Rosewood Grove, Decatur, Georgia 30034.

4.

Defendant, City of Atlanta, is a municipal corporation authorized to do business in the State of Georgia. It may be served with process through the City of Atlanta Department of Law located at 68 Mitchell Street, S.W., Atlanta, Georgia 30303.

5.

Pursuant to 28 USC§ 1332, diversity is proper in that the Plaintiff is seeking damages exceeding \$75,000 and the Plaintiff and Defendants are citizens of different States.

6.

On or about December 7, 2011, a City of Atlanta police cruiser driven by Officer J. Uhler was responding to a burglary call and was traveling in the vicinity of Brown Medical Associates located at 1123 R.D. Abernathy Boulevard, Atlanta, Georgia 30310.

7.

On or about December 7, 2011, Defendant, Garry Davis, was also traveling in the vicinity of Brown Medical Associates located at 1123 R.D. Abernathy Boulevard, Atlanta, Georgia 30310.

8.

On or about December 7, 2011, Defendant, Garry Davis, failed to yield the right of way to the police cruiser. Officer Uhler failed to maintain a proper lookout when coming over the crest of a hill, failed to maintain control of his vehicle, and crashed through the front door of Brown Medical Associates and came to rest in the waiting room.

**COUNT I**  
**(Negligence)**

Plaintiff realleges and incorporates the allegations contained in paragraphs 1-8 of this Complaint, as if set forth fully herein.

9.

The actions of Defendants City of Atlanta Officer J. Uhler and Garry Davis constituted a failure to exercise reasonable care for the Plaintiff's property, and was a proximate cause of subrogee's, Brown Medical Associates', damages.

**COUNT II**  
**(Prejudgment Interest)**

10.

Plaintiff realleges and incorporates the allegations contained in paragraphs 1-9 of the Plaintiff's Complaint, as if set forth fully herein.

11.

On or about October 30, 2012, the Plaintiff's representatives sent demand letters to the representatives of both Defendants, making demand for settlement in the amount sought herein and stating an intent to seek prejudgment interest if

the demands were not paid timely, copies of which are attached hereto as Exhibit "A".

12.

The Phoenix Insurance Company made payments to and on behalf of Plaintiff in the amount of not less than \$108,740.95, and is entitled to pursue recovery against the Defendants.

13.

Notice is hereby given that Plaintiff demands the sum of \$108,740.95 and that if this demand is not paid timely, and in the event that judgment is entered against the Defendants in this amount or greater, Plaintiff will seek prejudgment interest on the full amount demanded against each Defendant, at the rate of prime plus 3% per annum, being calculated on the 30<sup>th</sup> day following receipt of the demand letter, all in accordance with O.C.G.A. § 51-12-14.

WHEREFORE, Plaintiff demands judgment against the Defendants, GARRY DAVIS and CITY OF ATLANTA, in the amount of \$108,740.95, plus all costs of this action, plus all interest allowed by law, and demands such other and further relief as the Court may deem necessary and just under the circumstances.

This 13<sup>th</sup> day of May, 2013.

Respectfully submitted,

DODSON & ASSOCIATES

A handwritten signature in black ink, appearing to read "Robin A. Golivesky", written over a horizontal line.

ROBIN A. GOLIVESKY  
Ga. State Bar No. 300512  
Attorney for Plaintiff

Caller Service No. 1808  
Alpharetta, Georgia 30023-1808  
(678)317-7121  
(678)317-8915 (fax)